IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4091 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYKISAN KHANDSARI UDYOG - Petitioner(s)

Versus

COLLECTOR OF JUNAGADH & 1 - Respondent(s)

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Appearance :

MR AR THACKER for Petitioner(s) : 1,
None for Respondent(s) : 1 - 4.
MR SV RAJU for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioner Jaykissan Khandsari Udyog has challenged an order passed in February, 1989 passed by the Additional Chief

Secretary, Revenue Department, Government of Gujarat.

2. The petitioner herein was granted the Government land by an order dated 06-06-1976 on certain terms and conditions. One of the condition for grant of land was that the land will not be subdivided nor the same will be distributed without the permission of the Government. It was provided that the land will not be put in use other than their own industrial use without the permission of the Government. In condition no.14, it was stated that if any condition is found to have been breached, it will be open for the Collector to fine the petitioner, upon the payment of which the land may be permitted to be retained by the petitioner. In condition no.16 it was stated that the petitioner will abide by all the conditions that may be imposed by the Collector and if any of the condition is found to have been violated, the land will be forfeited by the Collector and the possession will be regained without payment of compensation.

3. It appears that the petitioner parted with the possession of land in favour of respondent no.5 illegally and permitted the said respondents to enjoy

the use and occupation of the land without any permission from the Collector. The proceedings for cancellation of the grant of land were initiated against the petitioner. The Deputy Collector passed an order on 25-05-1987 reclaiming the land. The petitioner as well as respondent no.5 appealed against the said order before the Collector. The Collector by his order dated 24-03-1988 did not accept the appeal of the petitioner herein and substantially allowed the appeal of the respondent no.5. Directions were given to the Deputy Collector to grant the land to respondent no.5 upon payment of market price. The petitioner therefore, filed a revision application before the Secretary(Appeals), Revenue Department, Government of Gujarat. By the impugned order passed in February, 1989, the Additional Chief Secretary rejected the revision application filed by the petitioner and also set aside the directions given in favour of the respondent no.5. It may be noted that respondent no.5 has not challenged the said order passed by the State Government. Therefore, in so far as the right of respondent no.5 are concerned, the same have been concluded.

4.The petitioner has challenged the order passed by the Government on various grounds. It is contended that there was no breach of any of conditions of grant of land. It was further contended that even if there was any breach of any of conditions, only action that the authorities could have taken was to recover fine and it was not open for the authorities to confiscate the land in question. It was contended that the petitioner had never parted with the possession and respondent no.5 had encroached on the said land and that therefore, the petitioner cannot be penalised for misdeeds of respondent no.5. Reliance was placed on the decision of the Learned Single Judge of this Court in the case of Patel Raghav Natha vs. G.F. Mankodi, Commissioner, Rajkot Division and others reported in 6 GLR 34 in which it was observed that the Government has no power under section 211 of the Bombay Land Revenue Code to revise the terms of agreement between the grantee and the Government.

5.Having perused the material on record and in particular the impugned order passed by the Additional Chief Secretary, I find that the petitioner has not made out any case for interference. From the order dated

06-06-1976, by which the land in question was granted to the petitioner, it can be seen that one of the conditions for grant of land was that the same shall not be parted with by the petitioner without the permission of the Government. Though condition no.14 of the Schedule does state that for any breach of any of the conditions, it will be open for the Collector to collect fine and to permit the petitioner to retain the land, such a condition cannot be read in isolation. Condition no.16 of the Schedule clearly provides that the petitioner shall abide by all the conditions imposed by the Collector and in case of breach of any condition, the land will be confiscated by the Government without payment of compensation. Combined reading of conditions no. 14 and 16 would mean that to collect fine for breach of condition is only one of the choices available with the Collector and in a given case confiscation of the land is also envisaged.

6. In the present case, the stand of the petitioner that the respondent no.5 had unauthorisedly encroached upon and trespassed in the land in question cannot be accepted. The petitioner which was supposed to be running a Khandsari Industry would not have permitted

any person to commit criminal trespass and take over the management of the land and the factory thereon without any protest. Admittedly, no criminal complaint was lodged for the alleged trespass. No civil proceedings have been initiated against the respondent no.5 for his eviction also. This would only demonstrate that the stand of the petitioner is not only unacceptable, same is dishonest. Having parted with the possession of the land granted by the Government for its exclusive use and occupation when confronted with the proceedings for eviction,the petitioner chose to suggest that the petitioner had not parted with the possession but that respondent no.5 had trespassed forcibly, on the land in question. There is absolutely no material on record to accept this version of the petitioner. The same is far fetched and sought to be raised only as an afterthought. Thus on all counts, the petitioner fails to justify parting with the possession contrary to a condition prohibiting such a transfer. Additional Chief Secretary, therefore, correctly disallowed the revision application filed by the petitioner. Reliance on the decision of this Court in the case of Patel Raghav Natha vs. G.F. Mankodi, Commissioner, Rajkot Division and others(Supra) is

misplaced. In the present case, the revenue authorities were justified in exercising power when the agreement between the parties which provided that land will not be transferred without the permission of the authorities and any breach of condition would incur the liability to confiscate the land.

7. The respondent no.5 had also breached law by directly acquiring the land from the petitioner. He therefore, obviously cannot have a preferential right to retain the land. Setting aside the order passed by the Collector which was otherwise in favour of the respondent no.5 was therefore, perfectly in order. The learned advocate Shri Pandya appearing for Shri S.V. Raju stated that respondent no.5 was not aware that the petitioner breached the condition while giving land to the respondent no.5. The said stand cannot be accepted. That the respondent no.5 was entering into some kind of arrangement to acquire a large piece of land presumably with a factory thereon. Respondent no.5 would have paid substantial amounts to the petitioners. It is not possible to believe that the respondent no.5 entered into such an arrangement without verifying necessary details regarding the title of the land in

question. If the respondent no.5 would have asked even for basic documents of title, same would have revealed that the petitioner was not authorised to transfer the land in favour of respondent no.5 or any other person. It is therefore, not possible to believe that respondent no.5 did not know that the petitioner was not authorised to transfer the land in favour of respondent no.5.

8. In view of the facts arising in the present petition, I do not find that there is any scope for interference in the impugned order where the petitioner has tried to setup a completely unacceptable and far fetched defence of respondent no.5 having forcibly occupied the land and committed trespass. In the result, the petition fails, is hereby rejected. Rule is discharged. Interim relief, if any, shall stand vacated.

(Akil Kureshi, J.)

(raghu)